

BEFORE THE
UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
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In Re:

Proposed Rulemaking (NPRM)
Notice No. 99-14

Docket No. FAA-1999-6001-13

COMMENTS OF THE
NATIONAL AIR CARRIER ASSOCIATION, Inc.
WITH REGARD TO THE RULE
ON

PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION

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September 24, 1999

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On behalf of NACA and its member air carrier? we are pleased to comment on this proposed regulation.

We commend the Administrator and the staff of the Federal Aviation Administration for this proposed regulation that would protect voluntarily disclosed information. One of the brightest prospects for making significant gains in aviation safety is for all of the stakeholders in government and the aviation industry to share lessons learned in our everyday operations so that all may benefit from those isolated deficiencies that do occur.

To accomplish this, the Government must develop sophisticated, but user friendly, networked computer systems that can be the conduit and repository of the voluntarily disclosed data. Then the Government must provide protections that make it convenient and safe for everyone to provide data to the system.

¹ American Trans Air, Evergreen International Airlines, Kitty Hawk International, Miami Air International, Omni Air International, Tower Air, and World Airways.

For years, the single most difficult obstacle to success in this area has been a need to proscribe a method of protecting individuals and companies from Government or public reprisal for information that is voluntarily provided. Public Law 104-264 and this proposal go a long way towards eliminating that problem. However, there appear to be several critical deficiencies in this proposal.

The proposal appears sufficient to protect most data from access under the Freedom of Information Act (5 USC § 552). However it clearly reserves a right for the FAA Administrator to make a determination that withholding the information was in conflict with other responsibilities of the Administrator (193.7(a)). Furthermore, the Administrator may disclose voluntarily provided information for prosecution or enforcement. These determinations take place after an individual or company has disclosed information under what they thought was a protected program. We believe most individuals and/or companies will not participate in this vital program under those circumstances.

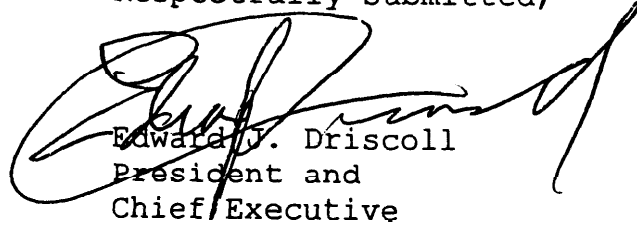
To be successful, this proposed regulation must clearly and unequivocally protect the individual and/or the company from Government enforcement activity or any other reprisal.

An additional deficiency is that the proposal does not appear to provide a program for voluntary disclosure that is affordable for small air carriers. Two programs are mentioned in the preamble. These are the Flight Operations Quality Assurance (FOQA) program and the Aviation Safety Action Program (ASAP). The FOQA program depends upon digital recorders to collect in-flight data for subsequent trend analysis. However, many of the aircraft flown by smaller carriers do not have digital data bus technology. Thus FOQA is out of the question until these carriers acquire a more modern fleet of aircraft. Frankly, that may **be** a decade or more from now. Additionally, ASAP programs require a contract between the FAA, the air carrier and its employees that are resource intensive.

To provide an opportunity for all operators to participate in a program of voluntary disclosure and protection, the proposal must clearly establish that individual air carrier self-disclosure programs may be provided protection. While these resemble ASAP programs, they are much more streamlined and less resource intensive.

Finally, the proposal should provide for protection of persons who disclose on an individual basis.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'E. J. Driscoll', is written over the typed name and title.

Edward J. Driscoll
President and
Chief Executive